

1 THE HONORABLE BENJAMIN H. SETTLE  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 HP TUNERS, LLC, a Nevada limited liability ) No. 3:17-cv-05760 BHS  
11 company, )  
12 Plaintiff, ) DEFENDANTS' ANSWER TO  
13 vs. ) COMPLAINT FOR INJUNCTIVE  
14 KEVIN SYKES-BONNETT and SYKED ) RELIEF AND DAMAGES  
15 ECU TUNING INCORPORATED, a )  
Washington corporation, )  
Defendants. ) JURY TRIAL DEMANDED  
\_\_\_\_\_  
)

16 Defendants Kevin Sykes-Bonnett and Syked ECU Tuning, Inc. (collectively "Syked  
17 Tuning") state by way of answer and affirmative defenses to Plaintiff's Complaint for Injunctive  
18 Relief and Damages ("Complaint") as follows.

19 **NATURE OF THE ACTION**

20 1. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
21 and, therefore, deny on at least that basis.

22 2. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
23 and, therefore, deny on at least that basis.

24 3. Denied.

25 4. Defendants admit only that the Complaint purports to allege the enumerated  
26 violations. Defendants deny that any such violations occurred or that the allegations have any  
27 merit.

## **PARTIES**

5. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

## 6. Admitted.

## **JURISDICTION AND VENUE**

7. Admitted that this Court has jurisdiction. Denied that any claims have any merit.

8. Admitted that this Court has jurisdiction. Denied that any claims have any merit.

9. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

### **BACKGROUND FACTS**

10. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

11. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

12. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

13. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

14. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

15. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

16. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

17. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

1       18. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
2 and, therefore, deny on at least that basis.

3       19. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
4 and, therefore, deny on at least that basis.

5       20. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
6 and, therefore, deny on at least that basis.

7       21. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
8 and, therefore, deny on at least that basis.

9       22. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
10 and, therefore, deny on at least that basis.

11      23. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
12 and, therefore, deny on at least that basis.

13      24. Admitted.

14      25. Denied.

15      26. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
16 and, therefore, deny on at least that basis.

17      27. Denied that Defendants provided anything inappropriate to Eric Brooks, or  
18 otherwise violated any provision of any EULA.

19      28. Denied.

20      29. Denied.

21      30. Denied.

22      31. Denied.

23      32. This paragraph misquotes and mischaracterizes any communication between  
24 Defendants and Eric Brooks. On that basis, this paragraph is denied.

25      33. Admitted that Plaintiff wrongfully withheld a large number of credits from  
26 Defendants which were owed by Plaintiff.

1       34.     Admitted only that Plaintiff ultimately provided the wrongfully withheld credits  
2 after much prompting by Defendants.

3       35.     Admitted.

4       36.     Admitted.

5       37.     Defendants are without sufficient knowledge of the facts alleged in this paragraph  
6 and, therefore, deny on at least that basis.

7       38.     Defendants deny the allegations of this paragraph on the basis that any truthful  
8 facts are mischaracterized so as to imply other facts which are not true.

9       39.     Denied.

10      40.     Defendants deny the allegations of this paragraph on the basis that any truthful  
11 facts are mischaracterized so as to imply other facts which are not true.

12      41.     Defendants deny the allegations of this paragraph on the basis that any truthful  
13 facts are mischaracterized so as to imply other facts which are not true.

14      42.     Admitted.

15      43.     Admitted.

16      44.     Defendants are without sufficient knowledge of the facts alleged in this paragraph  
17 and, therefore, deny on at least that basis.

18      45.     Denied.

19      46.     Defendants are without sufficient knowledge of the facts alleged in this paragraph  
20 and, therefore, deny on at least that basis.

21      47.     Defendants are without sufficient knowledge of the facts alleged in this paragraph  
22 and, therefore, deny on at least that basis.

23      48.     Denied.

24      49.     Defendants are without sufficient knowledge of the facts alleged in this paragraph  
25 and, therefore, deny on at least that basis.

26      50.     Defendants are without sufficient knowledge of the facts alleged in this paragraph  
27 and, therefore, deny on at least that basis.

1       51. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
2 and, therefore, deny on at least that basis.

3       52. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
4 and, therefore, deny on at least that basis.

5       53. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
6 and, therefore, deny on at least that basis.

7       54. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
8 and, therefore, deny on at least that basis.

9       55. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
10 and, therefore, deny on at least that basis.

11       56. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
12 and, therefore, deny on at least that basis.

13       57. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
14 and, therefore, deny on at least that basis.

15       58. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
16 and, therefore, deny on at least that basis.

17       59. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
18 and, therefore, deny on at least that basis.

19       60. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
20 and, therefore, deny on at least that basis.

21       61. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
22 and, therefore, deny on at least that basis.

23       62. Denied.

24       63. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
25 and, therefore, deny on at least that basis.

26       64. Denied.

27       65. Denied.

66. Denied as to Defendants. Defendants have no knowledge of the remaining allegations in this paragraph and, therefore, deny on at least that basis.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

## COUNT I

**VIOLATION OF COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. §1030**

73. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

74. Denied.

75. Denied.

76. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

83. Denied that any compliance is or was necessary as Defendants have not committed any of the wrongful acts alleged in the Complaint.

84. Denied.

85. Denied that Defendants have caused any harm to Plaintiff.

## COUNT II

**VIOLATION OF THE DEFEND THE TRADE SECRETS ACT, 18 U.S.C. § 1836**

# **WASHINGTON UNIFORM TRADE SECRET ACT, RCW 19.108**

86. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

87. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

88. Denied.

89. Denied.

90. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

91. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

92. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97 Denied

98 Denied

99 Denied

100 Denied

COUNT III

## **VIOLATION OF THE WASHINGTON UNIFORM TRADE SECRET ACT, RCW 19.108**

101. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

102. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

103. Denied.

104. Denied.

105. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

106. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

107. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

108. Denied.

109. Denied.

110. Denied.

### 111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

**COUNT IV**

**VIOLATION OF THE ILLINOIS TRADE SECRETS ACT, 765 ILCS 1065/1, ET. SEQ.**

116. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

117. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

118. Denied.

119. Denied.

120. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

121. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

122. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

COUNT V

## **UNFAIR COMPETITION UNDER THE**

**WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86.020**

131. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

132. Denied.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

DEFENDANTS' ANSWER TO COMPLAINT - 9  
No. 3:17-cv-05760 BHS

131191.0001/7108722.1

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## COUNT VI

**UNFAIR COMPETITION UNDER THE ILLINOIS CONSUMER FRAUD AND  
DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/1 ET. SEQ.**

137. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

138. Denied.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

## COUNT VII

## **BREACH OF CONTRACT**

143. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

144. Denied.

145. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

146. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

147. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

148. Denied.

149. Denied.

150. Denied.

## COUNT VIII

## **TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL OR ECONOMIC RELATIONS**

151. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

152. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

153. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

154. Denied.

155. Denied.

156. Denied.

157. Denied.

## AFFIRMATIVE DEFENSES

Syked Tuning incorporates by reference the foregoing paragraphs in their entirety. Syked Tuning hereby asserts the following affirmative defenses and reserves the right to assert, in the future, such additional defenses as may become available or apparent during discovery or through other pretrial proceedings. The assertion of any defense as an affirmative defense herein is not, and is not intended as, an admission that defendants have the burden of proof on any such defense or on any related element of Plaintiff's claims.

## **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because they fail to state a claim upon which relief can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of nominative fair use.

### THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

1                           **FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred, in whole or in part, by the doctrine of acquiescence.

3                           **FIFTH AFFIRMATIVE DEFENSE**

4 Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

5                           **SIXTH AFFIRMATIVE DEFENSE**

6 Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

7                           **SEVENTH AFFIRMATIVE DEFENSE**

8 Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

9                           **EIGHTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred, in whole or in part, because the acts complained of by  
11 Plaintiff are acts of third parties and not of Defendants, for which Defendants are not responsible.

12                           **NINTH AFFIRMATIVE DEFENSE**

13 To the extent that Defendants may be found liable under any legal theory, any amounts  
14 Defendants may owe must be limited or reduced by contribution, setoff, indemnification,  
15 apportionment, or other relief.

16                           **TENTH AFFIRMATIVE DEFENSE**

17 Plaintiff's claims are barred, in whole or in part, because of its failure to mitigate  
18 damages.

19                           **ELEVENTH AFFIRMATIVE DEFENSE**

20 Plaintiff's claims are barred, in whole or in part, because it failed to join one or more  
21 indispensable parties to this action.

22 Syked Tuning asserts these affirmative defenses in order to preserve its right to assert  
23 them at trial, to give Plaintiff notice of its intention to assert these defenses, and to avoid waiver  
24 of any defenses. Syked Tuning reserves its right to amend or supplement its affirmative defenses  
25 in the event additional information is obtained, through discovery or otherwise, that indicates the  
26 applicability of additional affirmative defenses.

## **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Syked Tuning demands a trial by jury of this action.

## **PRAYER FOR RELIEF**

WHEREFORE, Defendants Kevin Sykes-Bonnett and Syked ECU Tuning, Inc. respectfully request the following relief:

- A. Dismissal with prejudice of the claims asserted against Kevin Sykes-Bonnett and Syked ECU Tuning, Inc.;
  - B. Attorneys' fees and costs; and
  - C. Any other relief this Court deems just and equitable.

DATED: October 19, 2017

LANE POWELL PC

By s/John E. Whitaker  
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Attorneys for Defendants Kevin Sykes-Bonnett and Syked ECU Tuning Incorporated

**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2017 I electronically filed the above with the Clerk of the Court using the CM/ECF system. In accordance with their ECF registration agreement and the Court's ruling, the Clerk of the Court will send email notification of such filing to the following persons:

## **Attorneys for Plaintiff HP TUNERS, LLC**

- by CM/ECF
  - by Electronic Mail
  - by Facsimile Transmission
  - by First Class Mail
  - by Hand Delivery
  - by Overnight Delivery

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**Attorneys for Plaintiff HP TUNERS, LLC**

- by CM/ECF
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Executed on October 19, 2017, at Seattle, Washington.

*s/Kathi Milner*

## Kathi Milner, Legal Assistant

DEFENDANTS' ANSWER TO COMPLAINT - 14  
3:17-cv-05760 BHS

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